

UPDATED INFORMATIVE DIGEST

Current regulations for Residential Care Facilities for the Elderly (RCFE) include specific reporting requirements for licensees to submit to the California Department of Social Services (CDSS) within a specified time frame for specified events taking place. Reportable events include death or serious injury of a resident, use of an Automated External Defibrillator, any incident that threatens the welfare, safety or health of a resident, epidemic outbreaks, catastrophic events and/or hiring of a new facility administrator.

The proposed regulations will enact the RCFE Residents Foreclosure Protection Act of 2011 [Senate Bill (SB) 897, (Chapter 376, Statutes of 2011)], which added Section 1569.686 to the Health and Safety Code (HSC). These regulations will expand current reporting requirements to include various events signifying possible financial distress for RCFE licensees. Licensees experiencing any of the financial distress events, such as notice of default or other indication of property foreclosure, unlawful detainer, filing of bankruptcy, or notice of intent to terminate utilities, are required to report such to CDSS, State Long-Term Care Ombudsman, residents, and their representatives within the specified time frame. Licensees are also required to report such events to potential residents and their representatives prior to admission. Upon receipt of such a report, CDSS shall initiate corrective action. A licensee that fails to report any of these events may be subject to a civil penalty.

The Community Care Licensing Division (CCLD) is proposing regulations to adopt language in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, section 87211 compatible and consistent with the intent of SB 897 (Chapter 376, Statutes of 2011). These reporting requirements enable CDSS to address any quality of care issues that could arise in an RCFE experiencing financial distress, such as inadequate resources and/or the inability to provide appropriate staffing levels to provide care and supervision for residents. The proposed regulations will benefit residents and their families by providing advance notice of any financial distress events, thereby, allowing for the opportunity to research alternative placement and prepare residents for possible relocation. These reporting requirements provide protection to the health and safety of RCFE residents and prospective residents. The promulgation of these regulations is necessary to carry out CCLD's core function of protecting the health and safety of the vulnerable elderly population in licensed residential care.

Post-hearing changes:

The regulations were noticed on July 21, 2017. Testimony was received during the 45-day public comment period and changes were made to the proposed regulations as a result of the testimony. Those changes include:

87211 REPORTING REQUIREMENTS

87211

- (d) The licensee shall notify the Department, the State Long-Term Care Ombudsman, all residents, and, if applicable, their representatives, in writing within two business days of any of the following specified events, or knowledge thereof, as required by Health and Safety Code section 1569.686(a). Failure to do so may result in a civil penalty of one

~~hundred dollars (\$100) for each day, not to exceed two thousand dollars (\$2,000) and other actions deemed appropriate by the Department, as specified in Health and Safety Code section 1569.686(b).~~

- ~~(1) A notice of default, notice of trustee's sale, or any other indication of foreclosure is issued on the property.~~
- ~~(2) An unlawful detainer action is initiated against the licensee.~~
- ~~(3) The licensee files for bankruptcy.~~
- ~~(4) The licensee receives a written notice of default of payment of rent described in Section 1161 of the Code of Civil Procedure.~~
- ~~(5) A utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice.~~
- ~~(4)(e) The licensee shall disclose in writing any of the events, or knowledge thereof, specified in Health and Safety Code section 1569.686(a) Section 87211(d), prior to a potential resident or their representative signing the admission agreement.~~
- ~~(f) Failure to comply with section 87211(d) and (e) may result in a civil penalty of one hundred dollars (\$100) for each day of the failure to provide the required notification, not to exceed two thousand dollars (\$2,000) and other actions deemed appropriate by the Department, as specified in Health and Safety Code section 1569.686(b).~~
- ~~(g) The Department shall not waive the reporting requirements specified in section 87211(d).~~

HANDBOOK BEGINS HERE

~~Health and Safety Code section 1569.686(a) provides:~~

~~(a) A licensee shall notify the department, the State Long Term Care Ombudsman, all residents, and, if applicable, their legal representatives, in writing, within two business days, and shall notify all applicants for potential residence, and, if applicable, their legal representatives, prior to admission, of any of the following events, or knowledge of the event:~~

- ~~(1) A notice of default, notice of trustee's sale, or any other indication of foreclosure is issued on the property.~~
- ~~(2) An unlawful detainer action is initiated against the licensee.~~
- ~~(3) The licensee files for bankruptcy.~~
- ~~(4) The licensee receives a written notice of default of payment of rent described in Section 1161 of the Code of Civil Procedure.~~

~~(5) A utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice.~~

HANDBOOK ENDS HERE

(eh) Upon receipt of the licensee's notification to the Department, the Department shall initiate a compliance plan, noncompliance conference or other action deemed appropriate by the Department, as specified in Health and Safety Code section 1569.686(b). Should the Department become aware of the occurrence of any of the specified events specified in ~~Health and Safety Code section 1569.686(a)~~ section 87211(d) without notification from the licensee within the timeframe specified, the Department may take appropriate action against the licensee including the issuance of the civil penalty specified in Health and Safety Code 1569.686(c).

These regulations also underwent three 15-Day Public Comment Periods and the changes are as follows:

Section 87211(e)

For organizational purposes and to mirror the sequence of events specified in HSC section 1569.686, the language of Section 87211(h) has been stricken and relocated to Section 87211(g). Language previously located in Section 87211(g) has been added to Section 87211(h).

For grammatical accuracy, CDSS is amending Section 87211(h) to add an "a" prior to the words "civil penalty" to indicate the regulatory intent pertains to a single civil penalty. In addition, for clarity purposes and to clearly distinguish between the two different enforcement actions addressed in HSC section 1569.686(c), CDSS is amending Section 87211(h) to add Subsection Section 87211(h)(1) clarifying that if a licensee relocates a resident without required notification and the resident suffers transfer trauma as defined in Section 87101, or other harm to their health or safety, this may result in license suspension, revocation or other specified actions.

Section 87211(f)

Following the first 15-Day Renotice, for organizational purposes and ease of the reader, Section 87211(f) has been renumbered to 87211(g). For grammatical consistency, the word "section" has been capitalized. In addition, CDSS is amending the regulation language in Section 87211(g) to strike the word "and" and to add a comma after 87211(d) and the words "or Section 87211" and ", or both," to specify that failure to comply with either 87211(d) or 87211(e), or both specified subsections, may result in a civil penalty. The CDSS is striking the reference to HSC section 1569.686(b) as the reference is superfluous.

Following the second 15-Day Renotice, for organizational purposes and to mirror the sequence of events specified in HSC section 1569.686, the language of Section 87211(g) has been stricken and relocated to Section 87211(h). Language previously located in Section 87211(h) has been added to Section 87211(g).

Section 87211(g)

For organizational purposes and ease of the reader, Section 87211(g) has been renumbered to 87211(f). For grammatical consistency, the word "section" has been capitalized. In addition, the regulation is amended to strike the words "shall not" and add the words "does not have authority to" in order to make clear that CDSS does not have the authority to waive specified reporting requirements in Section 87211(d) as these requirements are codified in statute.